

OPTIMIZATION OF THE ROLE OF ASSET RECOVERY CENTER (PPA) OF THE ATTORNEY-GENERAL'S OFFICE OF THE REPUBLIC OF INDONESIA IN ASSET RECOVERY OF CORRUPTION CRIME RESULTS

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Abstract

The Asset Recovery Center (PPA), the Republic of Indonesia General Attorney's unit is responsible for ensuring asset recovery in Indonesia supported by an integrated system that is effective, efficient, transparent and accountable, by tracing, securing, maintaining, seizing, and returning assets of criminal acts of corruption handled by the Prosecutor's Office. However, the number of asset recovery due to corruption in the PPA remains small, and the current implementation is only done after a court decision, even though asset tracking should be done before the verdict. In addition, the urgency of its existence remains questionable, given its scope is almost equal to the Labuksi KPK and Rupbasan at the Ministry of Law and Human Rights, which indirectly creates a tug of war between the law enforcement units. Therefore, using a normative juridical approach and data obtained directly through library research and interview,, this paper found the importance of establishing a PPA for the Prosecutor's Office related to its duties and functions, as described in the Law and other regulations in the recovery of assets resulting from corruption, which does have a different position from the Labuksi KPK and Rupbasan. This paper also discusses the steps that must be taken by the Prosecutor's PPA to optimize the work of the Prosecutor's PPA so that assets resulting from corruption can be recovered quickly, effectively and transparently.

Pusat Pemulihan Aset (PPA) sebagai satuan kerja Kejaksaan Republik Indonesia, bertanggung jawab memastikan terlaksanakannya pemulihan aset di Indonesia dengan sistem pemulihan aset terpadu (Integrated Asset Recovery System) secara efektif, efisien, transparan dan akuntabel. Dengan melakukan penelusuran,

pengamanan, pemeliharaan, perampasan, dan pengembalian aset hasil tindak pidana korupsi yang ditangani Kejaksaan. Namun, jumlah pemulihan aset (asset recovery) hasil tindak pidana korupsi yang dilakukan PPA masih sedikit dan pelaksanaannya sekarang ini hanya dilakukan setelah ada putusan pengadilan, padahal seharusnya dapat dilakukan penelusuran (asset tracking) sejak sebelum putusan. Selain itu, urgensi keberadaannya masih dipertanyakan mengingat ruang lingkupnya hampir sama dengan Labuksi KPK dan Rujbasi pada Kemenkumham yang secara tidak langsung menimbulkan tarik menarik kewenangan antara unit aparat penegak hukum tersebut. Untuk itu, diperlukan optimalisasi PPA Kejaksaan agar aset hasil tindak pidana korupsi dapat dipulihkan secara cepat, efektif dan transparan.

Keywords: Asset Recovery, Corruption, Asset Tracking, Seizure

Introduction

The phenomenon of corruption in Indonesia is increasingly unstoppable, spreading like a virus that undermines all parties from various circles, including the Government itself. The rise of these criminal acts directly or indirectly harms State finances while at the same time harming the people. This is a challenge for the Government to make every effort to prevent and eradicate it. These various forms of corruption continue to pervade and undermine the country's finances and become a parasite. To that end, Indonesia ratified the UNCAC (United Nations Convention against Corruption) on April 18, 2006, with Law no 7 of 2006. The regulation was strengthened by the United Nations through the Convention Against Transnational Organized Crime (UNTOC) which included corruption as Organized Crime or transnational organized crime and had been ratified and enacting by Indonesia through Law No. 5 of 2009.¹

However, to date, the Government's efforts do not necessarily reduce the level of corruption crime by referring to the arguments of political experts. The latter pursued the view that corruption is very worrying and a challenging for every country today, especially for

¹ Mardjono Reksodiputro, *Perenungan Perjalanan Reformasi Hukum*, (Jakarta: Komisi Hukum Nasional Republik Indonesia, 2013), p.316.

Indonesia.² That is because the sanctions given to perpetrators, imprisonment, are considered to be not yet effective enough in combating corruption crimes.

The classic ways to recover state losses from corrupt acts by confiscating and seizing corrupt assets if the verdicts of corruptors have permanent legal force have proven ineffective in fighting corruption. In addition to robbing corruptors' assets cannot be done arbitrarily, there must be a reversal of the burden of proof outlined in Article 37 A and Article 38 B of Law Number 20 the Year 2001 Concerning Amendments to Law Number 31 of 1999 Concerning Eradication of Corruption. However, this method was deemed unsuccessful because it had to go through the same complicated legal processes and stages; another way to fight corruption is needed.³

An alternative that can be used to combat corruption is to *impoverish corruptors*, that is, how to get corruptors to lose their assets that are *assumed* to originate from the results of corrupt acts (proceeds of crime). Considering that, according to Mardjono Reksodiputro, corruption is categorized as a transnational organized crime, that can be justified using unusual methods in investigating criminal acts.⁴

Not only by seizing assets of corrupt assets, because deprivation, according to the Criminal Code is an additional crime so that legal proceedings and proof are needed first before confiscation can be carried out. Therefore, law enforcement officials have begun to change the paradigm in combating crime, which is from efforts to punish the perpetrators of crime to how to recover state assets lost from the act (asset recovery).⁵ By using the concept of Stolen Asset Recovery Non-

² The urgency and challenges referred to here because corruption has undermined the good Government towards its policies, processing resources, and also harming the private sector.

³ Yudi Wibowo Sukinto, "Konsep Baru Pengembalian Kerugian Negara Dari Tindak Pidana Korupsi", *Yuridika*, vol. 31, no. 2 (2016), p. 339.

⁴ Mardjono Reksodiputro, *Perenungan Perjalanan Reformasi Hukum*, p. 316.

⁵ Without being confiscated; basically, assets-corruptors cannot be confiscated. Efforts should be made to ensure that law enforcement tools are more agile in looking for "hidden assets", otherwise corruptors will remain "profitable". What about announcing more widely the LHK-PN of a state official charged with corruption? It is expected that there will be a whistleblower who gives the Prosecutor the existence of "hidden assets". Mardjono Reksodiputro, *Perenungan Perjalanan Reformasi Hukum*, p. 328.

Conviction Based Asset Forfeiture,⁶ based on the concept of asset recovery contained in the United Nations Convention Against Corruption (UNCAC), which has been ratified by Law No. 7 of 2006, can be interpreted as the recovery of assets that have been stolen through the confiscation of assets without punishment.

Asset recovery is a process of handling assets resulting from crime carried out in an integrated manner at each stage of law enforcement, so that the value of these assets can be maintained and fully returned to victims of crime, including to the state. Asset recovery also includes all preventive measures to keep the value of the asset from diminishing.⁷

The eradication of white-collar crime, one of which is a criminal act of corruption is not only enough to punish the perpetrators but must be balanced with efforts to cut the flow of the results of these crimes. By seizing the proceeds of crime, it is expected that the offender will lose the motivation to commit or continue the actions because the aim to enjoy the proceeds of crime will be in vain.⁸

As regulated in Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning corruption, the return of assets resulting from corruption is good through the civil procedure in civil lawsuits and criminal procedure. Asset recovery from the perpetrators of corruption through a civil lawsuit is regulated according to the provisions of Article 32, Article 33 and Article 34 and Article 38C of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001. Then through the criminal procedure, as regulated in Article 38 paragraph (5), Article 38 paragraph (6) and Article 38B paragraph (2), the confiscation and seizure process is stipulated. The provisions as mentioned above authorize the State Attorney to file a civil claim to the convicted and/or heirs at the level of investigation, prosecution or

⁶ Theodore S. Greenberg, Linda Samuel, Wingate Grant, and Larissa Gray, *Stolen asset recovery: a good practices guide for non-conviction based asset forfeiture* (Washington D.C: The World Bank, 2009), p. 15.

⁷ Widyopramono, "Peran Kejaksaan Terhadap Aset Revocery dalam Perkara Tindak Pidana Korupsi", *Training on Criminal Law and Criminology: "Asas- asas Hukum Pidana dan Kriminologi serta Perkembangannya Dewasa ini"*, Collaboration between MAHUPIKI and Gadjah Mada University, Yogyakarta, (23-27 February 2014), p. 4.

⁸ The Coordinating Ministry for Maritime Affairs and Investment of the Republic of Indonesia, "Kejaksaan Republik Indonesia Serius Tangani Pemulihan Aset", (20 Jul 2017), available: <https://maritim.go.id/kejaksaan-republik-indonesia-serius-tangani-pemulihan-aset/>, accessed on April 18 2018.

examination at a court hearing.⁹ The legislation policy has been strengthened by the Government by compiling the draft of the 2012 Criminal Asset Seizure Draft Bill.¹⁰

With asset recovery, it is hoped that it can have a deterrent effect on the perpetrators of corruption because recovery aims to serve the perpetrator's relationship with the assets owned from the proceeds of the crime by seizing the assets. This will make the criminal think twice about committing corruption, because if it is found, not only corporal punishment will be imposed, but their assets can also be confiscated.

Related to this, law enforcers have begun to look for alternative solutions by aggressively eradicating corruption through asset recovery. One of them is the Corruption Eradication Commission (KPK), an institution formed in 2003 to tackle and eradicate corruption in Indonesia. At the end of 2013, Asset Tracking, Evidence Management and Execution working unit (Labuksi) was formed, which was based on the results of an inventory of all cases that have obtained decisions that have permanent legal force, but have not been executed.¹¹ Finally, Labuksi was formed so that the management of the evidence is focused and can be recovered. Article 16 paragraph (1) of the KPK Regulation No. 01 of 2015 concerning the Organization and Work Procedure of the KPK, it plays a role in the field of asset tracking, evidence management, and execution of court decisions that have permanent legal force (*in kracht*). Then they have a special task, which is to track down corrupt assets that are deliberately removed, hidden, or disguised.¹²

⁹ Lilik Mulyadi, "Asas Pembalikan Beban Pembuktian Terhadap Tindak Pidana Korupsi Dalam Sistem Hukum Pidana Indonesia dihubungkan dengan Konvensi Perserikatan Bangsa-Bangsa anti Korupsi 2003", *Majalah Varia Peradilan*, no. 264 (November 2007), p. 36.

¹⁰ Aliyth Prakarsa and Rena Yulia. "Model Pengembalian Aset (Asset Recovery) Sebagai Alternatif Memulihkan Kerugian Negara Dalam Perkara Tindak Pidana Korupsi." *Jurnal Hukum Prioris*, vol, 6, no. 1 (2017), p. 37-38.

¹¹ Abba Gabrillin, "KPK Bekali Kejati se-Indonesia Soal Pengelolaan Barang Bukti dan Barang", *Kompas.com* (28 May 2018), available: <https://nasional.kompas.com/read/2018/05/28/11571851/kpk-bekali-kejati-se-indonesia-soal-pengelolaan-barang-bukti-dan-barang>, accessed on 11 Jan 2019.

¹² Komisi Pemberantasan Korupsi, *Laporan Tahunan KPK 2017*, available: <https://www.kpk.go.id/images/Laporan-Tahunan-KPK-2017-Web.pdf>, accessed on December 7 2018.

Previously, the Ministry of Law and Human Rights, which used to be the Department of Justice, had a Rupbasan unit, a place to store and manage objects confiscated by the State for the judicial process. Since the stipulation of the Decree of the Minister of Justice of the Republic of Indonesia Number M.04.PR.07.03 of 1985 concerning the Organization and Work Procedures of State Prisoners and State Confiscated Objects Storage Houses, on September 20, 1985, there are 35 Class I Rupbasan and 175 Class II Rupbasan.

Although it does not specifically have the task of recovering assets, such as Labuksi, Rupbasan is in accordance with Article 44 paragraph (1) of RI Law No. 8 of 1981 concerning KUHAP which states that confiscated objects are kept in the home of confiscated state property, which is further stipulated in Article 27 paragraph (1) Government Regulation No. 27 of 1983 concerning the implementation of the Criminal Procedure Code mentioned that the Rupbasan places objects that must be stored for evidence in the examination at the level of investigation, prosecution, and examination at a court hearing, including goods declared seized based on a judge's decision. Its existence is very important for the storage of confiscated goods and spoils from the results of criminal acts of corruption.¹³

With this history, asset recovery that has begun to be carried out by the Government has become raw again. Whether the asset recovery unit established by law enforcer carry out its duties properly or it has the same fate as the Indonesian Bank Restructuring Agency (BPPN). Especially in 2014, the Indonesian Attorney General's Office formed not only that things, but also formed an institution that specifically returned and restored State assets, Indonesian Bank Restructuring Agency (BPPN). This institution was established based on Presidential Decree Number 27 of 1998 and began its work on February 27 1999.

Due to its unsatisfactory performance, during the reign of Megawati Soekarno Putri, this institution was dissolved on February 27, 2004 based on Presidential Decree Number 15 of 2004 concerning Termination of Duties and Disbanding of BPPN. The dissolution of this ad hoc institution will have significant implications for the overall

¹³ Susidarto, "Implikasi Strategis Pembubaran BPPN", *Media Indonesia* (19 Feb 2004), available: <http://perpustakaan.bappenas.go.id/lontar/file?file=digital/blob/F1489/Implikasi%20Strategis%20Pembubaran%20BPPN-MI.htm>, accessed on July 18 2019.

restructuring system of national banks. The Indonesian Attorney General's PPA, whose role is to carry out asset recovery activities, provide assistance and coordinate and ensure that each stage of asset recovery can be integrated and run well in order to realize good governance. Will this formation be implied either in the future, or will it be the next collapse considering that the authority possessed is almost the same as the authority of Rupbasan and the Labuksi.

Based on the Regulation of the Attorney General of the Republic of Indonesia Number: Per-006/A/JA/3/2014 dated March 20, 2014 Regarding Amendments to the Regulation of the Attorney General of the Republic of Indonesia Number: PER-009/A/JA/01/2011 Regarding the Organization and Work Procedures of the Prosecutor's Office Republic of Indonesia, the PPA has been formed as the Prosecutor's work unit responsible for ensuring the optimal recovery of assets in Indonesia with an integrated asset recovery system in an effective, efficient, transparent and accountable manner and with values which are implanted as a guideline for the human resources of PPA, namely passion (working with enthusiasm and wholeheartedly), trust (trustworthiness), integrity (having and maintaining integrity), discipline, and globally (thinking and working globally).

PPA and Labuksi have the same concentration of tracking down and recovering corrupt assets. Meanwhile, Rupbasan was not specifically established for asset recovery, but its function is similar, namely, processing and storing assets. The urgency of the existence of these units is a big question, especially the PPA of the Prosecutor's Office that has the same duties and functions as the KPK's Labuksi for asset recovery. Considering that the Labuksi has been formed in advance and according to Law Number 30 of 2002 concerning the Corruption Eradication Commission, the KPK is a commission that is specifically created and becomes the coordinator in eradicating corruption.

Therefore, the question arises about what is the urgency of the Prosecutor's Office in establishing PPA in asset recovery in corruption cases regarding judges' decisions that seek to impose additional crimes in the form of payment of substitute money. However, it always clashes with the economic situation of convicts who are unable to pay off the replacement money. As a result, the criminal substitute money as an asset recovery effort is subsidized with imprisonment, so the judge's

decision cannot realize the hope of achieving economic justice,¹⁴ and who has the authority to become a central unit (leader) in asset recovery?. The existence of PPA, which was formed after the Labuksi of the KPK and Rupbasan at the Ministry of Law and Human Rights, has caused a tug-of-war and competition for authority in terms of asset recovery because both the Prosecutor's Office and the Corruption Eradication Commission have the authority to eradicate corruption in Indonesia. Especially, to date, the role of PPA in the recovery of assets resulting from criminal acts of corruption has not been optimal.

PPA is currently considered only working in the downstream position, and only working after there is an execution. Whereas the purpose of establishing PPA, as explained earlier, is to not only work downstream but also from the upstream. So, even though there has been no case yet, PPA should have identified its target candidate, identified assets that could be secured or frozen.¹⁵

Moreover, the existence of PPA raises its polemic among law enforcers because there is a tug of authority with other law enforcement agencies that have units with the same scope. The author hopes that PPA can become an integrated Asset Recovery System and can increase the effectiveness of asset recovery activities and coordination with national and international networks in combating and eradicating corruption.

Therefore, by using a normative juridical approach and data sources obtained directly through library research and interviews, this paper will discuss the urgency of the existence PPA in Indonesia. In this case, there should be the central unit (leader) in asset recovery corruption and how is the practice of coordinating PPA with Rupbasan and Labuksi in the recovery of assets resulting from corruption. This needs to find out the urgency of the existence of PPA in Indonesia, given the existence of the Labuction and Ministry of Law and Human Rights' Rupbasan which has the same scope, knowing and assessing who is the right to be a central unit (leader) in recovering assets from

¹⁴ Ade Mahmud, "Problematika Asset Recovery Dalam Pengembalian Kerugian Negara Akibat Tindak Pidana Korupsi", *Jurnal Yudisial*, vol. 11, no. 3 (2018), p. 360.

¹⁵ Prima Gumilang, "Kejaksaan Didesak Optimalkan Kerja Pusat Pemulihan Aset", *CCN Indonesia* (23 Dec 2015), available: <https://www.cnnindonesia.com/nasional/20151222165759-12-99919/kejaksaan-didesak-optimalkan-kerja-pusat-pemulihan-aset>, accessed on April 18 2018.

corruption in Indonesia and knowing the form Coordination of the PPA of the Prosecutor's Office with the Rupbasan and Labuksi whether it has been running to date and as a study material for cooperation in asset recovery.

Asset Recovery

Asset recovery is one of the efforts to eradicate corruption because it is considered as a powerful method compared to classical punishment, so that an authorized institution is needed to carry out the asset recovery. Among the sub-systems in the Criminal Justice System (SPP), law enforcer is considered as an appropriate sub-system to recover assets.

This can be seen from its function from the pre-trial stage is the initial stage of the process of examining criminal cases or the stage before a court hearing, the scope of which includes the initial investigation and investigation stages in which there are acts of determining the suspect, detention, arrest, search, confiscation, confiscation, application of the article alleged, and letter checks. Simply stated, these actions are said to be forced efforts because of their coercive nature and limit a person's freedom to his freedom, property and privacy.¹⁶ This pre-trial stage ends with the submission of case files by the Investigator to the Public Prosecutor, then continues to the adjudication stage, namely prosecution or examination in court. So, if in the trial hearing, the judge believes that confiscation is necessary, the judge then needs to issue a decree ordering the Public Prosecutor that the Investigator seize the object.¹⁷ Next, is the post-adjudication stage, which is a criminal decision that has been handed down by a judge, including ordinary and extraordinary legal efforts, including seizing assets that have permanent legal force.

This can be seen from a number of criminal law regulations that state the institution or sub-system authorized to carry out all stages of seizure until confiscation after a decision of permanent legal force is law enforcement, starting from Law No. 31 of 1999 as amended to Law No. 20 2001 concerning the eradication of criminal acts of corruption

¹⁶ Aristo Marisi Adiputra Pangaribuan, Arsa Mufti, and Ichsan Zikry, *Pengantar Hukum Acara Pidana di Indonesia* (Jakarta: Rajawali Press, 2017), p. 73.

¹⁷ M. Yahya, Harahap, *Pembahasan permasalahan dan penerapan KUHAP* (Jakarta: Sinar Grafika, 2000), p. 265.

described in Article 30. Then in Law No. 8 of 2010 concerning the prevention and eradication of the crime of money laundering described in Article 81. These provisions are also explained further in Article 36 of Chapter III of UNCAC and also explained in Article 54 paragraph (1a) of the UNCAC. The submission is to use MLA, which is a forum to request assistance from other countries to carry out investigations, prosecutions and examinations of cases involving two or more countries recommended by UNCAC.¹⁸

Law No. 35 of 2009 concerning narcotics also explains the authority of law enforcers in confiscating goods resulting from narcotics crimes contained in Article 91. This is also contained in the UNODC Asset Recovery Network Directory regulation which explains if the members of each country are composed of law enforcers. It is also explained in the International Anti-Corruption Coordination Center (IACCC) which brought together specialist law enforcement officers from various institutions around the world to eradicate corruption. Actions that might fall into this category include bribery of public officials, embezzlement, misuse of functions, and laundering of proceeds of crime.

The rules of various criminal law rules, confiscation, and seizure of goods require law enforcement authority. In fact, international asset recovery organizations also consist of law enforcers who play a role in asset recovery, which is also strengthened at the UNCAC as an anti-corruption convention, which promotes asset recovery also explains the need for authorities in this case law enforcement agencies to seize and confiscate assets as efforts to eradicate corruption.¹⁹ Thus, the authors consider that the sub-system that is considered appropriate to act as an asset recovery institution is a law enforcer. In this case, the authors limit between Labuksi, PPA and Rupbasan.

¹⁸ Jamin Ginting, "Perjanjian Internasional Dalam Pengembalian Aset Hasil Tindak Pidana Korupsi di Indonesia", *Jurnal Dinamika Hukum*, vol. 11, no. 3 (2011), p. 453.

¹⁹ Tim Penyusunan Naskah Akademik tentang Perampasan Aset Tindak Pidana, *Laporan Akhir Naskah Akademik Rancangan Undang-Undang tentang Perampasan Aset Tindak Pidana* (Jakarta: Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia, 2012), p. 78.

The urgency of Establishment of Corruption Criminal Asset Recovery Institution

Law Number 5 of 1991 concerning the Attorney General of the Republic of Indonesia as amended to Law Number 16 of 2004 concerning the Attorney General of the Republic of Indonesia explained that the AGO *kejaksaan* is an institution that has a central position with a strategic role in strengthening the nation's resilience. Therefore, as a law enforcement agency, it is universally the central institution in the criminal law enforcement and controlling the case process (*dominus litis*), which has the duty and responsibility to coordinate or control investigations, carry out prosecutions and carry out the decision of a judge who has permanent legal force (*inkracht van gewijsde*), and has the responsibility and authority for all confiscated evidence both in the prosecution stage for the purpose of substantiating the case, as well as for the purpose of execution.²⁰ Based on the description above, the Prosecutor's Office has *pro justitia* authority (for justice) to move at three levels, namely investigation, prosecution (including delegation of evidence and control of assets during the execution (execution authority) and management authority.²¹

Although KPK is an institution specifically formed to eradicate corruption and act as a coordinator, the Prosecutor's Office with its authority as a sub-system in the Criminal Justice System also has a role in eradicating corruption. Therefore, the Prosecutor's Office indirectly has the authority to manage and recover assets of criminal acts, especially corruption.

There is a need to settle arrears on booty and replacement money and receivables from BPK amounting to 14 trillion in 2014, and the need for organizations to combat corruption.²² The Indonesian Attorney General's Office has formed a unit whose main focus is to recover assets, namely the Asset Recovery Center (PPA).²³ PPA must

²⁰ Kejaksaan Republik Indonesia, *Pengertian Kejaksaan*, available: https://www.kejaksaan.go.id/profil_kejaksaan.php?id=1, accessed on March 3 2018.

²¹ Ferdinand T. Andi Lolo, *Pusat Pemulihan Aset Kejaksaan Republik Indonesia, Departemen Kriminologi Universitas Indonesia*, Jakarta: Universitas Indonesia, p. 11.

²² Romli Atmasasmita, *Sistem Peradilan Pidana (Criminal Justice System) Perspektif Eksistensialisme Dan Abolisionalisme* (Jakarta: Bina Cipta, 1996), p. 1.

²³ Muhammad Yusuf, *Merampas Aset Koruptor* (Jakarta: Penerbit Buku Kompas, 2013), p. 223.

continue to work on the performance of the Task Force and Expropriated and Confiscated Execution (Satgassus) which was formed in 2010 by the Attorney General. In some cases, Satgassus still has weaknesses, that the agency is only given the authority to work downstream in the criminal justice process and only executes court decisions which have permanent power. The limited authority possessed has hampered the handling and data collection of assets in the upstream part (investigation and prosecution). Referring to the need to increase the authority of Satgassus, and based on the regulations examined, including Presidential Regulation No. 39/2010: Attorney General Regulation No. PER-009/A/JA/01/2011: Regulation of the Minister of Finance No. 96/PMK.06/2007 it is possible to form a permanent work unit within the Central structure.²⁴

Although the scope of work of KPK's Labuksi has similarities with PPA, according to the Head of PPA of Foreign Countries, Banu Laksana, the execution function is still held by the Prosecutor's Office in restoring assets resulting from corruption, at the same time, in the KPK Law there is no execution authority. This is explained in Article 39 paragraph (3) of Law No. 30 of 1999 as amended to Law No. 20 of 2001 concerning Eradication of Corruption, which states "Investigators, investigators, and public prosecutors who are employees of the Corruption Eradication Commission, suspended from the police and prosecutors office while serving as an employee of the Corruption Eradication Commission ". Thus, the task of the executor or Prosecutor in the Corruption Eradication Commission is only seconded and remains attached to the institution of origin, in this case, the Prosecutor's Office. In addition, the duties and authority possessed by the Prosecutor's Office as *dominus litis*, make it possible to execute all criminal acts, including corruption. Therefore, PPA is important to be formed to eradicate corruption by recovering assets resulting from criminal acts of corruption.²⁵

With total assets recovered in 2018 of IDR 53,649,400,795, only around Rp IDR 35,545,462,000.00 originating from criminal acts of

²⁴ Requisiteire, "Kejaksaaan Kini Resmi Memiliki Pusat Pemulihan Aset", <http://requisiteire-magazine.com/2014/05/28/kejaksaaan-kini-resmi-memiliki-pusat-pemulihan-aset-ppa/>, accessed on April 19 2018.

²⁵ Interview with Banu Laksana, Head of PPA of Foreign Countries, in RI Attorney General's PPA Building, January 18 2019.

corruption. This acquisition is very lower compared to 2015, which reached Rp. 69,670,375,085.09, which consists of Determination of Use Status (PSP) in the form of the use of state booty, booty through auction sales and sale of booty and criminal acts of corruption.

Asset recovery results by the PPA are classified as fluctuating, sometimes of great value sometimes small. With the average assets that were mostly recovered came from PSP and cases handled by pidsus. This achievement is not yet optimal given the authority and task functions of the Public Prosecutor's Office, with all the legal basis that supports it. According to the Head of PPA Abroad Recovery of Assets Abroad, this is because PPA has not worked in the whole process of asset recovery stages, which according to Perja No. 27 of 2014 concerning the Asset Recovery Guidelines consist of five stages previously mentioned. However, PPA is involved in the last stage, namely, asset recovery. Therefore, PPA has not worked as it should from upstream to downstream but only from downstream. This is due to the lack of synergy between the Pidsus Prosecutor's Office and the Prosecutor's PPA, considering that Pidsus is a prosecutor investigating corruption cases.

The duties, functions, scope and great authority possessed by the PPA have been disastrous. Because many prosecutors who should have served as executors of recovering assets at the PPA but were exposed to cases. One of them is the case of the former head of PPA for the period 2014-2015, Chuck Suryosumpeno who was caught for the case of settling Hendra Rahardja's assets in 2012.²⁶ Chuck was sued during the Attorney General Prasetyo's term and dismissed as Maluku High Prosecutor's Office (Kajati) because the process of selling Hendra's assets was not in accordance with procedures. Not only Chuck, a number of prosecutors employed at PPA is also caught in many cases and brought to justice even after they are no longer serving at PPA.

This raises many questions, whether the policies or broad scope of the PPA makes many prosecutors forget themselves until finally caught up in a case. With this fact, is the policy and authority possessed by the PPA of the Prosecutor's Office to be blamed? As well as whether it is

²⁶ Andi Saputra, "Jadi Tersangka Usai Menang Lawan jaksa Agung Siapa Jaksa Chuck", *Detik.com* (7 Nov 2018), available: <https://news.detik.com/berita/d-4290727/jadi-tersangka-usai-menang-lawan-jaksa-agung-siapa-jaksa-chuck>, accessed on July 18 2019.

necessary to optimize the PPA given the many cases that arise and ensnare the Prosecutor. So that although the current performance is less than optimal, the current role makes PPA more appropriate to work after downstream or after adjudication.

In addition, according to Paku Utama, the existence of regulatory disparities has made PPA performance not optimal. The Prosecutor has been educated from the beginning to have a mindset of the main objective of conducting an investigation is to arrest the suspect described in Article 1 paragraph (2) of the Criminal Procedure Cod. It states, "a series of investigative actions in terms of and according to the manner stipulated in this Law to search for and collect evidence which with that evidence makes clear about the crime that occurred and to find the suspect." Therefore, training and competency enhancement are needed for prosecutors to change the mindset from looking for suspects to finding assets to recover.

Leader (Centre) of Asset Recovery

PPA currently has a position as an observer at CARIN (Camden Asset Recovery Inter-Agency Network) will also have an asset recovery secure data system (ARSSYS) in 2019. This system will facilitate the performance of PPA in recovering assets because each stage will be digitally inputted by the Prosecutor at Pidsus when resolving corruption cases. PPA will oversee the recovery of assets from the initial stages and will have up to date information. This application also, according to Paku Utama as a developer, can also strengthen the position of PPA in the recovery of assets resulting from corruption in the future. Law enforcers in Indonesia, both the Prosecutors' Office KPK formed a unit whose task and function is to recover assets resulting from corruption. Previously, the Ministry of Law and Human Rights had established Rupbasan as a place to maintain assets resulting from criminal acts.

However, the existence of these units caused a debate about who deserves to be a leader (center) to recover assets resulting from criminal acts of corruption. Bearing in mind either the Attorney General's Office, the KPK and the Ministry of Law and Human Rights have the basis and authority to become a leader (center) of asset recovery. The Prosecutor's Office in the Criminal Code has a position as the center of an integrated criminal justice system that has the task of *dominus litis* in

investigating all criminal acts including corruption. While the KPK was formed specifically as a coordinator according to Law No. 30 of 1999 as amended to Law No. 20 of 2001 to eradicate the results of criminal acts of corruption.

The Asset Recovery Center does not only recover assets within the Republic of Indonesia Attorney's Office, but can receive and carry out asset recovery from other Ministries/Institutions with the approval of the Indonesian Attorney General. This is the great authority of the Prosecutor's Office compared to other agencies such as the Ministry of Law and Human Rights as the holder of the Central Authority function which only carries out administrative functions that are not directly involved in law enforcement practices.²⁷ With the scope of assets obtained directly or indirectly from criminal offenses including those which have been granted or converted into personal wealth, other people or corporations, found items, state assets controlled by unauthorized parties and other assets based on the Law is compensation for victims or to those entitled to.²⁸

Several steps are carried out in asset recovery activities that begin from tracking assets to discovering and knowing the origin and whereabouts of assets, securing assets to prevent assets from changing hands to other parties, maintaining assets to preserve the integrity of assets, confiscation of assets to separate rights to assets based on court decisions. In addition, the return of assets to the victim/owner who has the right to be preceded by the transfer.²⁹ With these duties and authorities, PPA is considered to be a leader (center) in asset recovery, even though its performance must continue to be optimized in carrying out its duties and functions.

Rupbasan's authority to maintain and manage goods is only limited. Not all items can be deposited with Rupbasan, although the Criminal Procedure Code is not further explained regarding this matter.

²⁷ Darmono, "Ekstradisi Terpidana Kasus Korupsi dalam Rangka Penegakan Hukum Tindak Pidana Korupsi", *Lex Jurnalica*, vol. 9, no. 3 (2012), p. 140.

²⁸ Pemulihanaset.com, "Kejaksanaan Republik Indonesia Serious Tangani Pemulihan Aset", available: <https://pemulihanaset.com/berita/detail/KEJAKSAAN-REPUBLIK-INDONESIA-SERIOUS-TANGANI-PEMULIHAN-ASET>, accessed on March 21 2019.

²⁹ Pemulihanaset.com, "Kejaksanaan Republik Indonesia Serious Tangani Pemulihan Aset", accessed on March 21 2019.

However, in practice Rupbasan's authority is only to store and manage goods that can be presented before the trial.³⁰ Therefore, despite having authority related to assets, the authority of Labuction and Rupbas is not greater than the Prosecutor's Office. The Prosecutor's Office can handle all cases of all types of criminal acts, including corruption both those handled by the Prosecutor's Office and other state departments. Although the current condition of PPA is not optimal and has not been integrated with all other Attorney General units or work units.

Besides because of the authority of the Prosecutor's Office, the results of the FGD on the Asset Seizure Bill held in November 2018; the author considers that the PPA is considered to have the authority as the leader (center) of asset recovery of all criminal acts including corruption with their position, duties and functions, according to the Law, either the Prosecutor's position in the Criminal Code, Law No. 16 of 2014 and the Asset Seizure Bill.

Coordination between Asset Recovery Units

Each unit must work optimally and be able to carry out their duties and functions properly and there must be good mutual coordination between them. Coordination between SPPs can complement each other because each unit must have weakness, and need other expertise in recovering assets of many kinds and disclosing them.³¹

However, unfortunately, to date, there has been no coordination between the PPA, the Labuction and Rupbasan. The three of them carry out their duties and functions according to the Law without involving each other to assist in recovering assets resulting from criminal acts of corruption.

Not only working as an asset recovery unit, the PPA should also coordinate with the Directorate General of State Assets (DJKN) of the Ministry of Finance based on Article 1037 of the Minister of Finance Regulation number 184/pmk.01/2010 concerning the organization and work procedures of the finance ministry which has the task of

³⁰ Article 40 of Law No. 30 of 1999 as amended to Law No. 20 of 2001 concerning Eradication of Corruption.

³¹ Interview with Mardjono Reksodiputro, Dosen Universitas Salemba, on Optimization of the Asset Recovery Center in Asset Recovery of Results of Corruption Funds, February 26, 2019.

formulating and implementing policy and technical standardization in the field of State assets, State receivables and auctions.

Therefore, coordination with DJKN is very important for the optimization of PPA, given its duties and functions can strengthen each other in order to recover assets resulting from criminal acts of corruption in Indonesia. With the related vessel theory, this coordination can be interconnected and improve performance in the SPP.

With its various shortcomings, the PPA continues to be a leader in asset recovery because all legal grounds support it. Especially with his authority as *dominus litis*, namely, controlling the entire case process. Based on HIR, an investigation is an inseparable part of the prosecution. This authority makes the Prosecutors as the coordinator of the investigation as well as being able to conduct their investigation. Thus, the Prosecutor's Office occupies a position as a key figure in the entire process of administering criminal Law from the beginning to the end.³² Therefore, the position of PPA even with all its shortcomings as a leader becomes appropriate. However, it still must make various improvements and learn and coordinate with other parties to optimize its role.³³

Optimum Asset Recovery by PPA

PPA Attorney still has a less than optimal performance in asset recovery and must continue to improve from all aspects including conducting a lot of coordination and cooperation with other parties who have the task and function intersections to recover maximum assets for the State.

Therefore, the PPA must also improve the system starting from strengthening regulations, mindset, practice, competency training and asset recovery specialists consisting of multidisciplinary expertise. The same was stated by Professor of the University of Indonesia (UI) Mardjono Reksodiputro that the PPA must have intelligence officers,

³² Adery Ardan Saputro, *Peran Kejaksaan RI sebagai Dominus Litis dalam Kekisruhan KPK vs Polri, MaPPI FHUI* (22 Oct 2015), available: <http://mappifhui.org/2015/10/22/peran-kejaksaan-ri-sebagai-dominus-litis-dalam-kekisruhan-kpk-vs-polri/>, accessed 30 Feb 2019, p. 8.

³³ Interview with Paku Utama about the Asset Recovery Center (PPA), in Jalan Pinguin 6 ch3 Bintaro, January 26, 2019.

reliable researchers, hackers tax people, customs and others in one unit. This needs to resolve more complex asset recovery cases by demanding not only the perpetrator but also the defamed property.

In addition, it is also necessary to improve the recruitment pattern in the PPA of the Prosecutor's Office that not only recruits law graduates but also from other disciplines according to organizational needs as well as to improve performance, one of which is by creating secure asset recovery data systems (Arssys). Furthermore, the position of the PPA should be increased from echelon 2 to echelon 1 and made a law derived from the Law of the Prosecutor's Office so that it can run as an executor of asset recovery for all criminal acts in Indonesia, including corruption.³⁴

Conclusion

The PPA is deemed to have the right urgency to be established by the Prosecutor's Office to recover the assets of all criminal acts including corruption, with their duties and authority as *dominus litis* and part of the center of the criminal justice system. Therefore, the PPA is considered worthy of being the leader (center) of asset recovery. This is not only due to its wider duties and authority compared to other asset recovery units, but also due to its position as an executor whose role is to handle all cases, including corruption.

However, PPA has not officially coordinated with other asset recovery units. Although they have almost the same tasks, each of them has an independent performance, while the current coordination is only in the form of information exchange. This is one of the factors that PPA performance is not optimal. Besides, the PPA should also coordinate with the Directorate General of State Assets (DJKN) of the Ministry of Finance based on Article 1037 of the Minister of Finance Regulation number 184/pmk.01/2010 concerning the organization and work procedures of the finance ministry having the task of formulating and implementing technical policies and standardization in fields of state assets, state receivables and auctions.

To achieve this optimization, various steps need to be done. These steps include system improvement, strong coordination, recruitment of

³⁴ Interview with Irene Putrie about the Asset Recovery Center (PPA), Attorney General's Office PPA Building, April 5 2019.

human resources from multidisciplinary knowledge, and improvement of foreign language skills for PPA staff as a whole. So, they do not only work from downstream, but to work from the beginning of the whole process in the asset recovery stage. This should be done so that the vision carried by PPA as an integrated asset recovery system can run as it should, and the results of asset recovery are optimal.

Bibliography

- Article 40 of Law No. 30 of 1999 as amended to Law No. 20 of 2001 concerning Eradication of Corruption.
- Atmasasmita, Romli, *Sistem Peradilan Pidana (Criminal Justice System) Perspektif Eksistensialisme Dan Abolisionalisme.*, Jakarta: Bina Cipta, 1996.
- Darmono, Darmono, “Ekstradisi Terpidana Kasus Korupsi dalam Rangka Penegakan Hukum Tindak Pidana Korupsi,” *Lex Journalica* 9, no. 3 (2012).
- Gabrillin, Abba, “KPK Bekali Kejati se-Indonesia Soal Pengelolaan Barang Bukti dan Barang”, *Kompas.com* (28 May 2018), available: <https://nasional.kompas.com/read/2018/05/28/11571851/kpk-bekali-kejati-se-indonesia-soal-pengelolaan-barang-bukti-dan-barang>, accessed on 11 Jan 2019.
- Ginting, Jamin, “Perjanjian Internasional dalam Pengembalian Aset Hasil Korupsi di Indonesia”, *Jurnal Dinamika Hukum*, vol. 11, no. 3 (2011), pp. 450-459.
- Greenberg, Theodore S., Linda Samuel, Wingate Grant, and Larissa Gray, *Stolen asset recovery: a good practices guide for non-conviction based asset forfeiture*, Washington D.C: The World Bank, 2009.
- Gumilang, Prima, “Kejaksanaan Didesak Optimalkan Kerja Pusat Pemulihan Aset”, *CCN Indonesia* (23 Dec 2015), available: <https://www.cnnindonesia.com/nasional/20151222165759-12-99919/kejaksanaan-didesak-optimalkan-kerja-pusat-pemulihan-aset>, accessed on April 18 2018.
- Harahap, M. Yahya. *Pembahasan permasalahan dan penerapan KUHAP*, Jakarta: Sinar Grafika, 2000.
- Interview with Banu Laksmana, Head of PPA of Foreign Countries, in RI Attorney General’s PPA Building, January 18 2019.
- Interview with Irene Putric about the Asset Recovery Center (PPA), Attorney General’s Office PPA Building, April 5 2019.

- Interview with Mardjono Reksodiputro, Dosen Universitas Salemba, on Optimization of the Asset Recovery Center in Asset Recovery of Results of Corruption Funds, February 26, 2019.
- Interview with Paku Utama about the Asset Recovery Center (PPA), in Jalan Pinguin 6 ch3 Bintaro, January 26, 2019.
- Kejaksaan Republik Indonesia, *Pengertian Kejaksaan*, available: https://www.kejaksaan.go.id/profil_kejaksaan.php?id=1, accessed on March 3 2018.
- Komisi Pemberantasan Korupsi, *Laporan Tahunan KPK 2017*, available: <https://www.kpk.go.id/images/Laporan-Tahunan-KPK-2017-Web.pdf>, accessed on December 7 2018.
- Lolo, Ferdinand T. Andi, *Pusat Pemulihan Aset Kejaksaan Republik Indonesia, Departemen Kriminologi Universitas Indonesia*, Jakarta: Universitas Indonesia.
- Mahmud, Ade. "Problematisasi Asset Recovery Dalam Pengembalian Kerugian Negara Akibat Tindak Pidana Korupsi." *Jurnal Yudisial*, vol. 11, no. 3 (2018), pp. 347-366.
- Mulyadi, Lilik, "Asas Pembalikan Beban Pembuktian Terhadap Tindak Pidana Korupsi Dalam Sistem Hukum Pidana Indonesia dihubungkan dengan Konvensi Perserikatan Bangsa-Bangsa anti Korupsi 2003", *Majalah Varia Peradilan*, no. 264 (November 2007).
- Pangaribuan, Aristo Marisi Adiputra, Arsa Mufti, dan Ichsan Zikry, *Pengantar Hukum Acara Pidana di Indonesia*, Jakarta: Rajawali Press, 2017.
- Pemulihanaset.com, "Kejaksaan Republik Indonesia Serius Tangani Pemulihan Aset", <https://pemulihanaset.com/berita/detail/KEJAKSAAN-REPUBLIK-INDONESIA-SERIOUS-TANGANI-PEMULIHAN-ASET>, accessed on March 21 2019.
- Prakarsa, Aliytha, and Rena Yulia. "Model Pengembalian Aset (Asset Recovery) Sebagai Alternatif Memulihkan Kerugian Negara Dalam Perkara Tindak Pidana Korupsi." *Jurnal Hukum Prioris*, vol. 6, no. 1 (2017).
- Reksodiputro, Mardjono, *Perenungan perjalanan reformasi hukum*. Komisi Hukum Nasional, Jakarta: Republik Indonesia, 2013.
- Requisitoire, "Kejaksaan Kini Resmi Memiliki Pusat Pemulihan Aset", <http://requisitoire-magazine.com/2014/05/28/kejaksaan-kini->

- resmi-memiliki-pusat-pemulihan-aset-ppa/, accessed on April 19 2018.
- Saputra, Andi, “Jadi Tersangka Usai Menang Lawan jaksa Agung Siapa Jaksa Chuck”, Detik.com (7 Nov 2018), available: <https://news.detik.com/berita/d-4290727/jadi-tersangka-usai-menang-lawan-jaksa-agung-siapa-jaksa-chuck>, accessed on July 18 2019.
- Saputro, Adery Ardan, *Peran Kejaksaan RI sebagai Dominus Litis dalam Kekisruhan KPK vs Polri, MaPPI FHUI* (22 Oct 2015), available: <http://mappifhui.org/2015/10/22/peran-kejaksaan-ri-sebagai-dominus-litis-dalam-kekisruhan-kpk-vs-polri/>, accessed February 30, 2019.
- Sukinto, Yudi Wibowo, “Konsep Baru Pengembalian Kerugian Negara Dari Tindak Pidana Korupsi”, *Yuridika*, vol. 31, no. 2 (2016), pp. 339-357.
- Susidarto, Susidarto, “Implikasi Strategis Pembubaran BPPN”, *Media Indonesia* (19 Feb 2004), available: <http://perpustakaan.bappenas.go.id/lontar/file?file=digital/blob/F1489/Implikasi%20Strategis%20Pembubaran%20BPPN-MI.htm>, accessed on July 18 2019.
- The Coordinating Ministry for Maritime Affairs and Investment of the Republic of Indonesia, “Kejaksaan Republik Indonesia Serius Tangani Pemulihan Aset”, (20 Jul 2017), available: <https://maritim.go.id/kejaksaan-republik-indonesia-serius-tangani-pemulihan-aset/>, accessed on April 18 2018.
- Tim Penyusunan Naskah Akademik tentang Perampasan Aset Tindak Pidana, *Laporan Akhir Naskah Akademik Rancangan Undang-Undang tentang Perampasan Aset Tindak Pidana*, Jakarta: Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia, 2012.
- Widyopramono, Widyopramono, “Peran Kejaksaan Terhadap Aset Revocery Dalam Perkara Tindak Pidana Korupsi”, *Training on Criminal Law and Criminology: “Asas- asas Hukum Pidana dan Kriminologi serta Perkembangannya Dewasa ini”*, Collaboration between MAHUPIKI and Gadjah Mada University, Yogyakarta, 23-27 February 2014.
- Yusuf, Muhammad, *Merampas Aset Koruptor*, Jakarta: Penerbit Buku Kompas, 2013.